Supreme Court of the United States.

No. 29.—October Term, 1904.

The City of Seattle, Appellant, vs. Daniel Kelleher, Administrator of John W. Thompson, Deceased.	Appeal from the Circuit Court of the United States for the District of Washington.

[November 28, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court declaring an assessment upon the plaintiff's land void under the Fourteenth Amendment, and enjoining the city against enforcing the same. The facts are these: Weller Street, in Seattle, runs east from Elliott Bay, and formerly stopped at the east line of Maynard's Donation Claim. The land now belonging to the appellee, the plaintiff below, is a hundred acres to the east of that line, extending to the line of the Jackson Street Addition. Weller Street, if extended eastward, would run through the middle of this land for twenty-five hundred feet. While this land belonged to one Hill, in 1889, he petitioned that Weller Street be extended and graded to the Jackson Street Addition line, and he submitted to the City Council and circulated, although he did not record, plans showing the extension, with his land on the two sides of it divided into lots and blocks. The plan was approved, and in 1890 the city passed an ordinance that Weller Street be graded from the beginning to Jackson Street Addition, and that sidewalks be constructed on both sides of it coextensive with the grade. Ordinance No. 1285. The street was graded, and, according to the testimony, had to be cut and filled almost continuously. It also was planked for some distance, but the planking stopped about a thousand feet before reaching Hill's tract. Then an assessment was levied, but this was held void. The next things that happened were a sale of Hill's land and a mortgage of it in January, 1892, to the appellee, which later was foreclosed. The appellee, who lived out of the State, alleges that he was ignorant of the submission of the plan by Hill.

On March 9, 1893, an act was approved authorizing a new assessment, when the old one had been declared void, upon the lands benefited, to the extent of their proportionate part of the expense of the improvement, based upon its actual value at the time of its completion, and having reference to the benefits received. Notice by publication of a time for hearing objections was provided for, with an appeal to the courts. Laws of 1893, c. 95. When the improvement in question was ordered, by the charter of Seattle the

planking was to be paid for out of the general taxes. Laws of 1885–1886, pp. 238, 241, § 7. The special assessment for the other elements, according to the assessed value of the land, could be imposed upon the abutting property to one hundred and twenty-eight feet back from the street. This was modified by a new charter adopted later in 1890, and still in force. Under the latter the assessment was to be by the front foot, with different percentages for four parallel subdivisions at successive distances from the street up to one hundred and twenty feet. It was to be for the cost of the improvement. To carry out the plan, local improvement districts were to be established, including all the property within the termini of the improvement, and not more than one hundred and twenty feet on each side of the margin. Reassessments were authorized. In pursuance of the charter an ordinance was adopted by the city providing the manner in which the local assessments should be made. Ordinance No. 2085.

In this state of the ordinances and laws a reassessment of the whole cost of the improvement was ordered in January, 1894, in conformity with the act of 1893, the new charter and the Ordinance No. 2085. Ordinance No. 3199. The proper steps were taken and the assessment was confirmed on March 5, 1894. Ordinance No. 3267. By this assessment the whole cost of the improvement, $35,620.60, was levied on the abutting land, and $14,262.68 was fixed as the plaintiff's share. It is alleged that he thus is charged forty-four per cent under the present plan, whereas under the one in force when the improvement was made he would have been charged only thirty-two per cent. It also is alleged that, being absent from the State, he did not know of the reassessment proceedings until they were concluded.

The bill disputed, among other things, that the prolongation of Weller Street through the plaintiff's land, ever had been dedicated as a street. But in view of the assumption by the Circuit Court that the dedication was made out and the statement by it that the point had been decided by the Supreme Court of the State, this objection, if open, very properly was not pressed before us. See *Seattle* v. *Hill*, 23 Wash. 92. Therefore we have not gone into details upon that part of the case. We see no cause to doubt that the Circuit Court was right. The main ground of argument is that the planking could not be included in the assessment. The reasons, as summed up by the Circuit Court, are that the law in force at the time of doing the work did not authorize a charge for planking upon the abutting property, that the Ordinance No. 1285 ordering the improvement did not authorize any planking, that the city could assess only the land abutting on the improvement and the plaintiff's land was far away from the planking, and that such an assessment of the whole cost, including the planking, on the property on Weller Street, is absolutely unfair as to the plaintiff's land.

A general attack upon the statute of 1893 is not attempted. It was within the power of the legislature to create, or to authorize the creation, of special taxing districts, and to charge the cost of a local improvement upon the property in such a district by frontage. *Webster* v. *Fargo*, 181 U. S. 394. *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324. *McNamee* v. *Tacoma*, 24 Wash. 591, 595. Cooley, Const. Lim., 7th ed., 729. The only question of principle, therefore, raised by the inclusion of the planking in the sum of which the plaintiff was to pay his share is whether it was manifestly unfair in this particular case. Taken by itself it looks like an unwarrantable attempt to make one man pay for another man's convenience.

On the other hand, so far as the work was similar in character, throughout the street, we are of opinion that the improvement might be regarded as one. *Webster* v. *Fargo*, 181 U. S. 394. See *Lincoln* v. *Street Commissioners*, 176 Mass. 210, 212. And if this be admitted we cannot say that the assessing board might not have been warranted in thinking that substantial justice was done. There were many cuts and fills made in grading the road. So far as appears, the heaviest work may have been done on the plaintiff's land, which seems to have been the summit of an ascent. Improvement of one sort may have been the greatest there, while that of a different kind, needed where the travel was, was at the other end of the street. It is true that the Circuit Judge considered that there was manifest injustice in assessing the plaintiff's land, which was empty and unimproved, by the front foot at the same rate as the improved land lower down and nearer to the bay, and that his opinion naturally carries weight, from his probable acquaintance with the condition of the place. But we do not find a sufficient warrant for it on the record. We must consider how things looked at the time. The owner of the land desired the improvements, if carried out as he wished. The extension of the street helped to bring his land into the market. It was more likely to benefit him than those who were lower down. We cannot invalidate the assessment because the speculation has failed. Assuming, without deciding, that the question is open to the plaintiff in this proceeding, we are of opinion that the record does not justify interference by injunction on the ground that the assessment was manifestly unfair.

The answer to the other objections may be made in few words. If, as is said, planking was not authorized under the word "sidewalks" in Ordinance No. 1285, the city has done or adopted the work and presumably has paid for it. At the end the benefit was there, on the ground, at the city's expense. The principles of taxation are not those of contract. A special assessment may be levied upon an executed consideration, that is to say, for a public work already done. *Bellows* v. *Weeks*, 41 Vt. 590, 599, 600. *Mills* v. *Charleton*, 29 Wis. 400, 413. *Hall* v. *Street Commissioners*, 177 Mass. 434, 439. If this were not so it might be hard to justify reassessments.

See *Norwood* v. *Baker*, 172 U. S. 269, 293. *Williams* v. *Board of Supervisors*, 122 U. S. 154. *Frederick* v. *Seattle*, 13 Wash. 428. *Cline* v. *Seattle*, 13 Wash. 444. *Bacon* v. *Seattle*, 15 Wash. 701. Cooley, Taxation, 3d ed., 1280. The same answer is sufficient if it be true that when the work was done the cost of planking could not be included in the special assessment, which again depends on the meaning of the words "sidewalk" and "pave" in the old Charter, § 8, taken with the special provision for planking in § 7. Laws of 1885–1886, pp. 238, 241. The charge of planking on the general taxes was not a contract with the land owners, and no more prevented a special assessment being authorized for it later than silence of the laws at the same time as to how it should be paid for would have. In either case the legislature could do as it thought best. Of course, it does not matter that this is called a reassessment. A reassessment may be a new assessment. Whatever the legislature could authorize if it were ordering an assessment for the first time it equally could authorize, notwithstanding a previous invalid attempt to assess. The previous attempt left the city free "to take such steps as were within its power to take, either under existing statutes, or under any authority that might thereafter be conferred upon it, to make a new assessment upon the plaintiff's abutting property" in any constitutional way. *Norwood* v. *Baker*, 172 U. S. 269, 293. *McNamee* v. *Tacoma*, 24 Wash. 591. *Annie Wright Seminary* v. *Tacoma*, 23 Wash. 109.

We think it unnecessary to consider other questions on the part of the case that we have dealt with. We have said enough in our opinion to show that the enforcement of the assessment lien could not be prevented by the original owner. It is urged, however, that a different rule could be applied in favor of one who purchased the land under the circumstances stated above. But the attempt to liken taxation, whether general or special, to the enforcement of a vendor's lien, and thus to introduce the the doctrine concerning *bona fide* purchasers for value, rests on a fallacy similar to that which we have mentioned above, which would deny the right to tax upon an executed consideration. A man cannot get rid of his liability to a tax by buying without notice. See *Tallman* v. *Janesville*, 17 Wis. 71, 76. Cooley, Taxation, 3d ed., 527, 528. Indeed he cannot buy without notice, since the liability is one of the notorious incidents of social life. In this case the road was cut through the plaintiff's land, and, if he had looked, was visible upon the ground. Whether it had been paid for was for him to inquire. The history of what had happened would have suggested that it was not improbable that sooner or later a payment must be made.

Decree reversed.

Mr. Justice HARLAN and Mr. Justice BROWN dissent.